

STATE OF MICHIGAN
COURT OF APPEALS

WOLVERINE MUTUAL INSURANCE
COMPANY, FRANK NALL III, and DEBBIE S.
NALL,

UNPUBLISHED
February 21, 2003

Plaintiffs-Appellants,

v

MICHIGAN CONSOLIDATED GAS
COMPANY,

No. 234413
Grand Traverse Circuit Court
LC No. 00-020364-NZ

Defendant-Appellee.

Before: Whitbeck, C.J., and Griffin and Owens, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendant's motion for directed verdict. We affirm.

Plaintiffs argue on appeal that their proffered expert witnesses were qualified to give testimony regarding the standard of care applicable in the natural gas industry and regarding whether defendant breached that duty of care and that the trial court erroneously barred the testimony of these two witnesses based on an improperly narrow application of the requirements for qualifying experts. Plaintiffs further assert that, as a result of this first mistake, the trial court then erred a second time by granting defendant's motion for directed verdict based on plaintiffs' failure to establish a prima facie case of negligence. We disagree.

The qualification of a witness as an expert, and the admissibility of his testimony, are in the trial court's discretion and will not be reversed on appeal absent an abuse of that discretion. *Mulholland v DEC Int'l Corp*, 432 Mich 395, 402; 443 NW2d 340 (1989). If a trial court determines that recognized scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert may testify to the knowledge by opinion or otherwise. MRE 702; *Anton v State Farm Mut Automobile Ins Co*, 238 Mich App 673, 677; 607 NW2d 123 (1999). This Court has held that a witness may be qualified to testify as an expert witness by virtue of his knowledge, skill, experience, training, or education in the subject matter of the testimony. MRE 702; *Grow v WA Thomas Co*, 236 Mich App 696, 713; 601 NW2d 426 (1999). However, the party offering the expert has the burden of showing that the expert has the necessary qualifications. *Siivila v Barrios*, 398 Mich 576, 591; 248 NW2d 171 (1976).

It is true, as plaintiff contends, that Michigan endorses a broad application of these requirements in qualifying an expert, *Mulholland, supra* at 403-404; *Grow, supra*, and in addition, any gaps or limitations in a proposed expert witness' knowledge or qualifications are relevant to the weight to be given to the witness' testimony and not to the testimony's admissibility. *McPeak v McPeak*, 233 Mich App 483, 493; 593 NW2d 180 (1999); *Woodruff v USS Great Lakes Fleet, Inc*, 210 Mich App 255, 260; 533 NW2d 356 (1995). However, this case involves not merely a gap or limitation, but an actual lack of experience on the relevant subject. Accordingly, these rules cited by plaintiffs do not apply in this case.

The trial court indicated that both witnesses were more than qualified to discuss electrical principles and phenomenon, and the court qualified both witnesses as experts for the limited purpose of offering opinions regarding the behavior of electricity along copper wires, whether electricity running along a copper wire could arc to a nearby gas meter, and how such an occurrence may have contributed to the fire which resulted in the case. However, the court pointed out that what was actually at issue in this case was not whether an arc occurred, but rather whether the methods used by defendant in laying and placing of copper tracer wire in proximity to the Nalls' gas meter and in tying such wires off, were proper practices. The court noted that to express an opinion whether defendant's practices were reasonable was, essentially, to give an opinion regarding what the standard of care was in the natural gas industry. The court stated that in order to express an opinion on whether defendant breached its standard of care, and what that standard of care was, the witnesses needed to have experience in the design, installation, maintenance, and construction of underground gas distribution systems and their associated tracer wires. The testimony was that the proffered witnesses did not have experience in those areas. Therefore, the trial court correctly refused to qualify either of plaintiffs' proffered witnesses as experts for the purposes of testifying regarding the standard of care owed by defendant and whether defendant breached that duty.

Next, having determined the trial court did not abuse its discretion in barring the testimony of plaintiffs' witnesses, we conclude that the trial court correctly granted defendant's motion for directed verdict. A trial court's decision on a motion for a directed verdict is reviewed de novo. *Derbabian v S & C Snowplowing, Inc*, 249 Mich App 695, 701; 644 NW2d 779 (2002).

In their complaint, plaintiffs alleged a negligence cause of action. In order to establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached that duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). In bringing its motion, defendant challenged only the first two of these elements.

Viewing the testimony presented at trial in the light most favorable to plaintiffs, we agree with the trial court that a directed verdict in favor of defendant was warranted because no evidence was presented on either the question of the standard of care in the natural gas industry or on the issue whether defendant breached that duty. Accordingly, the trial court properly granted defendant's motion for directed verdict.

Affirmed.

/s/ William C. Whitbeck

/s/ Richard Allen Griffin

/s/ Donald S. Owens